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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,959	04/07/2006	Johan Elgebrant	1027651-000503	8429

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BUCHANAN, INGERSOLL & ROONEY PC
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EXAMINER

BYRD, LATRICE CHENELL

ART UNIT	PAPER NUMBER
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3782

NOTIFICATION DATE	DELIVERY MODE
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03/09/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/574,959	Applicant(s) ELGEBRANT, JOHAN	
	Examiner LATRICE BYRD	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/7/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8 and 11-18, drawn to a packaging container.

Group II, claim(s) 9-10, drawn to a method of producing a packaging container.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The method of claim 9 recites "providing a sleeve" in line 5, but the product as claimed does not require a sleeve.

During a telephone conversation with Matthew Schneider on 2/12/09 a provisional election was made with traverse to prosecute the invention of Group I, a packaging container, claims 1-8 and 11-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

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requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during

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prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Drawings

Figure 3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 6-8, 12 and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayward (USPN 5,353,943).

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3. In re claim 1, Hayward discloses a packaging container comprising a first portion (10) formed of a first material or material combination, a second portion (100) formed of a second material or material combination, and a pouring opening (24) formed in said first portion, characterized in that the first portion is further provided with a tearing line (67,69) extending essentially from the pouring opening towards the interface between the first portion and the second portion and essentially along the complete extension of said interface.

4. In re claim 2, Hayward discloses a packaging container wherein the first portion (10) of the container is generally formed of a plastic material (column 5, lines 58-61).

5. In re claims 4 and 12, Hayward discloses a packaging container wherein the tear line (67,69) is defined by a weakening line extending essentially from the pouring opening towards the interface between the first portion (10) and the second portion (100) and essentially along the complete extension of said interface.

6. In re claims 6 and 14, Hayward discloses a packaging container wherein the weakening line (67,69) is a portion of smaller wall thickness than surrounding portions, the inferior wall thickness being formed by a groove on the outside of the first portion.

7. In re claims 7 and 15, Hayward discloses a packaging container wherein the weakening line (67,69) is a portion of smaller wall thickness than surrounding portions, the inferior wall thickness being formed along the portion of the weakening line extending from the pouring opening to the interface by a groove on the inside of the first portion, and along the interface by a groove shown at 20 on the outside of the first portion.

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8. In re claims 8 and 16-18, Hayward discloses a packaging container wherein the pouring opening is shaped such that a pull tab (33) is formed on either side of the point where the tear line (67,69) intersect the edge of the pouring opening.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward (USPN 5,353,943).

11. In re claims 3 and 11, Hayward fails to disclose the second portion of the container being formed of fibre based packaging laminate. Official Notice is taken that using a fibre based material is a notoriously well-known feature for forming a container. Therefore, it would have been obvious to a person having ordinary skill in the art to have formed the second portion of the container of fibre based packaging laminate in order to easily fold the material into a package for pouring products.

12. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward (USPN 5,353,943) in view of Larrison (USPN 4,942,974).

13. In re claims 5 and 13, Hayward fails to disclose a packaging container wherein the first portion of the container is formed by injection moulding of a plastic material into

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a mould. Larrison teaches the use of injection molded plastic material. It would have been obvious to one of ordinary skill in the art at the time of the invention to have formed the first portion of the container of Hayward with injection molded plastic material as taught by Larrison in order to package food products in inexpensive "tub" type containers (column 1, lines 9-14).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schmitt (USPN 1,312,581), Tobiasson (USPN 2,105,798), Rhoads (USPN 4,955,500), Warden et al. (USPN 5,398,843) and Bolton et al. (USPN 5,688,544).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATRICE BYRD whose telephone number is (571)270-5703. The examiner can normally be reached on Mon-Thu 7:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATRICE BYRD/
Examiner, Art Unit 3782

/Gary E. Elkins/
Primary Examiner, Art Unit 3782